srp.

**HIGH COURT OF JUDICATURE AT BOMBAY**
**CIVIL APPELLATE JURISDICTION**

**WRIT PETITION NO. 2153 OF 1997.**

Kamlakar M. Dhakepalkar,
Age: Major, Ex-vice Chairman of
Maharashtra Administrative Tribunal,
Bombay. ..Petitioner.

VERSUS.

1. The State of Maharashtra
2. Accountant General,
   Maharashtra State, Bombay.
3. Secretary, Law & Judiciary
   Department, Bombay.
4. The Secretary, General
   Administration Department,
   Bombay. ..Respondents.

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Mr. R. L. Patil i/b Smt. Jyoti R. Pingle for the petitioner.
Ms. P. S. Cardoz, AGP for the respondent nos. 1, 3 & 4.

**CORAM: S. B. MHASE &**
**D.G.KARNIK,JJ.**

**DATE: AUGUST 28, 2007.**

**ORAL JUDGMENT (Per D.G.Karnik,J.)**

1. Heard learned counsel for the parties.

2. By this petition the petitioner seeks a direction for re-computation and re-fixation of his pension at the rate of Rs. 4,000/- per month with effect from date of his superannuation, viz., 12th April 1994, and for payment of arrears - i.e., the difference in the pension at the rate of Rs.4,000/- per month and the pension already paid to him.

3. The petitioner joined the judicial service as a Civil Judge, Junior Division and retired as a District Judge on 30th April 1987 on attaining the age of superannuation. The petitioner's pension as a District Judge was fixed at Rs.3,250/- per month. After a lapse of about 4 years, the petitioner was appointed as a Vice Chairman of the Maharashtra Administrative Tribunal (for short, "the Tribunal") and he assumed the office as such on 9th July 1991. The petitioner retired as a Vice Chairman of the Tribunal on 12th April 1994. After retirement in his second employment as a Vice-Chairman of the Tribunal the petitioner claimed that he was entitled to the pension as a Judge of the High Court in view of Rule-15A of the Maharashtra Administrative Tribunal (Salary and Allowances and Conditions of Service of Chairman, Vice-Chairman and Members) Rules, 1986 (for short, "the Rules.)

4. A writ petition bearing Writ Petition No. 3540 of 2002 involving similar issues regarding computation of pensionary benefits to Vice Chairman of the Tribunal was filed by one Mr. Shrinivas Venkatrao Joshi, who had also retired as a Vice-Chairman of the Tribunal, after serving as a District Judge. The said writ petition was decided by the Division Bench of this Court (Coram: C.K.Thakker, C.J. and Dr. D.Y.Chandrachud, J.) by its judgment and order dated 3rd February, 2003 wherein the direction was issued to

the respondents to reconsider the matter in accordance with law and re-calculate and re-compute the pensionary benefits admissible to the petitioner therein in accordance with the law as interpreted in the said decision.

5. Mr.R.L.Patil, learned counsel for the petitioner stated before us that the directions issued by this Court in the writ petition no.3540 of 2002, have been accepted by the respondents and not only the pensionary and retirement benefits of the petitioner therein were re-computed but the pensionary and retirement benefits of the present petitioner have also been re-computed. Learned counsel produced for our inspection the copies of the two orders dated 20th October 2003 passed by the Assistant Accountant General, Bombay re-computing and re-fixing the pension and gratuity of the petitioner. After having perused the orders regarding the re-computation of the pension of the petitioner made by the respondents, we are of the view that the grievance of the petitioner in this petition has been redressed in view of the said orders dated 20th October 2003.

6. Mr. Rajeev Patil, learned counsel for the petitioner further submitted that the petitioner was satisfied with the order of re-computation of the pension and gratuity. He however submitted that subsequently, by an order dated 3rd May 2007 some

reduction has been made in the pension of the petitioner which was fixed by the order of Assistant Accountant General dated 20th October 2003. He submitted that the said re-computation is illegal and without any authority of law. The said order dated 3rd May 2007 has been passed without affording any opportunity of hearing to the petitioner. Counsel further submitted that the order dated 3rd May 2007 has civil consequences inasmuch as it reduces the pension already fixed of the petitioner. Such an order could not have been passed without hearing the petitioner; is violative of the principles of natural justice, and is required to be set aside.

7. The petitioner has not challenged the order dated 3rd May 2007 in this petition. In fact it could not have been originally challenged as it has been passed 10 years after filing of the present petition. No amendment has been made in the petition for challenging the order dated 3rd May 2007.

8. If the petitioner is aggrieved by the order dated 3rd May 2007, he is at liberty to challenge the said order by means of an appropriate petition. So by granting liberty to the petitioner to challenge the order dated 3rd May 2007, by appropriate proceedings, if so advised, the petition is disposed of.

. Rule is discharged with no order as to

costs.

**(D.G.KARNIK, J.)** **(S.B.MHASE, J.)**